United Nations CAT/C/CHN-HKG/Q/5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
15 June 2015

Original: English
Chinese, English, French and Spanish only

**Committee against Torture**

# List of issues in relation to the fifth periodic report of Hong Kong, China*

## Articles 1 and 4

1. In the light of the Committee's previous recommendations (paras. 5 and 6),[1] please provide updated information on steps taken or envisaged for the adoption of a definition of torture that is compatible with article 1 of the Convention, and in particular to:

(a) Adopt a more inclusive definition of the term "public official" in the definition of torture so as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of any public official or other person acting in an official capacity;[2]

(b) Ensure that the definition comprises all elements contained in article 1, including discrimination of any kind;[3]

(c) Recognize the non-derogable character of the prohibition of torture[4] and abolish any possible defence for the crime of torture.[5]

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

[1] Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee and published under the symbol CAT/C/HKG/CO/4.

[2] See CAT/C/HKG/CO/4, para. 5; CCPR/C/CHN-HKG/CO/3, para. 8; CAT/C/39/Add.2, paras. 96 and 97; and CAT/C/CHN-HKG/5, paras. 1.3 and 1.4, with reference to paras. 60 and 61 of the previous periodic report (CAT/C/HKG/4). See also CAT/C/HKG/Q/4/Add.1, para. 8.

[3] See CAT/C/HKG/CO/4, para. 5; CCPR/C/CHN-HKG/CO/3, para. 8; and CAT/C/CHN-HKG/5, para. 1.5.

[4] See CCPR/C/CHN-HKG/CO/3, para. 8.

[5] See CAT/C/HKG/CO/4, para. 6; CCPR/C/CHN-HKG/CO/3, para. 8; CAT/C/39/Add.2, paras. 99–101 and 107; and CAT/C/CHN-HKG/5, paras. 1.5 and 1.6.

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## Article 2[6]

2. Please provide information on steps taken or envisaged for the establishment of a fully independent national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please also update the Committee about whether Hong Kong, China has taken steps to strengthen the mandate and the independence of existing bodies, including the Ombudsman and the Equal Opportunities Commission, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 7).

3. Please update the Committee on the measures taken and the procedures in place to ensure that, in law and in practice, all persons deprived of their liberty are guaranteed the right to be informed of the reason for their arrest, to have access to a lawyer of their choice, to contact family members and to promptly receive an independent medical examination. Please also comment on reports before the Committee that following the annual Hong Kong march on 1 July 2014 more than 500 protesters were arrested, some of whom were allegedly not allowed access to a lawyer and were not provided with food and water for several hours, before being released without charge.

4. With reference to the periodic report (CAT/C/CHN-HKG/5, para. 16.34), please provide updated information on:

(a) The number of complaints, investigations and prosecutions (specifying the offences), convictions, and sentences handed down for the crime of trafficking, disaggregated by year and by the victims' sex, age, and ethnic origin or nationality, as well as the types of protection and compensation provided to victims during the period in question;

(b) Any steps taken or envisaged for the adoption of comprehensive anti-trafficking legislation and any efforts to address the root causes of trafficking in persons, in particular women and children, as recommended by the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 57);[7]

(c) Policies and procedures to identify victims of trafficking, in particular child victims;[8]

(d) The protection, support and assistance provided to victims of trafficking, including on safeguards to ensure that they are treated as victims and not criminalized,[9] and steps taken to ensure that victims of trafficking are not deported on the grounds of being illegal immigrants;[10]

(e) Efforts made to ensure bilateral, regional and international cooperation to prevent trafficking,[11] and any plans to extend the Protocol to Prevent, Suppress and Punish

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[6] The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. Paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties reads: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

[7] See CEDAW/C/CHN/CO/7-8, paras. 56 and 57 (a) and (d).

[8] See CRC/C/CHN/CO/3-4, paras. 45 (d) and 46 (d), and CCPR/C/CHN-HKG/CO/3, para. 20.

[9] See CAT/C/HKG/CO/4, para. 7 (d), and CRC/C/CHN/CO/3-4, para. 45 (e).

[10] See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.

[11] See CEDAW/C/CHN/CO/7-8, para. 57 (c).

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), to Hong Kong, China.[12]

5. Pursuant to the recommendation of the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 55), please provide information on the status of the reform of the legislation governing sexual offences,[13] and in particular indicate whether (a) sexual offences against children[14] and persons with intellectual disabilities have been included; and (b) the definition of rape has been brought into line with international standards.[15] Please provide further information on the measures taken to strengthen the practical implementation of the Domestic and Cohabitation Relationships Violence Ordinance (chap. 189).[16] In this context, please update the Committee on (a) the number of complaints received concerning acts of domestic and gender-based violence, the investigations into such complaints, the sentences handed down and the compensation provided to victims; (b) comprehensive assistance provided to victims, including legal assistance during court proceedings; (c) the occupancy rate of shelters for victims of violence;[17] and (d) the number and type of protective measures provided out of the total requested. In addition, please provide updated information on the progress made in reducing domestic violence through use of the Central Domestic Violence Database.[18] With regard to the information provided in paragraphs 16.17 and 16.28 of the periodic report, please expand on the measures taken to increase public awareness about domestic violence, including domestic violence against women and girls with disabilities.[19] In particular, please indicate what policies and awareness campaigns have been developed, to what extent they have been implemented, and the guidelines in place for prosecutors, the police and other workers.

## Article 3

6. According to information before the Committee, Hong Kong, China has established a new unified screening mechanism for assessing claims on the grounds of (a) torture as defined in the Convention; (b) torture and other forms of ill-treatment as defined in article 3 of the Hong Kong Bill of Rights Ordinance; and (c) persecution as defined in article 33 of the Convention relating to the Status of Refugees, of 1951.[20] Please provide detailed information on:

(a) The new mechanism and its practical implementation since its inception;

(b) The Court of First Instance judgements in the cases of *Ubamaka Edward Wilson v. Secretary for Security and another* (FACV 15/2011) and *C and others v. Director of Immigration and another* (FACV 18-20/2011);

(c) The criteria in place for assessment, including whether a person seeking protection must first overstay their visa and be liable for removal from Hong Kong, China before they are eligible to file a claim, and the prioritization of claims. What safeguards are

[12] Ibid., paras. 56 and 57 (d); and CCPR/C/CHN-HKG/CO/3, para. 20.
[13] See also CAT/C/CHN-HKG/5, para. 16.9.
[14] See CRC/C/CHN/CO/3-4, para. 46 (d).
[15] See CEDAW/C/CHN/CO/7-8, para. 55.
[16] See CAT/C/CHN-HKG/5, para. 16.13; and CCPR/C/CHN-HKG/CO/3, para. 18.
[17] See CAT/C/CHN-HKG/5, paras. 16.18–16.21.
[18] See CAT/C/HKG/CO/4, para. 13 (d); and CAT/C/CHN-HKG/5, paras. 16.10 and 16.12.
[19] See CCPR/C/CHN-HKG/CO/3, para. 18.
[20] Ibid., para. 9; and CAT/C/CHN-HKG/5, paras. 3.3 and 3.6.

applied to ensure that the threshold for recognizing a substantial risk is not inappropriately high,[21] and how does Hong Kong, China ensure that the assessment of these risks is conducted in a child-, gender- and culture-sensitive manner? Please also include information on the guidance provided to asylum seekers on the procedure;

(d) Any proposals to enhance the unified screening mechanism.

7. The Committee notes that Hong Kong, China enacted the Immigration (Amendment) Bill in 2012 (Ordinance No. 23 of 2012).[22] Please provide detailed information on the content of the legislation and its practical implementation since it came into force.[23] In particular, please (a) clarify whether the Ordinance applies to all grounds for non-refoulement mentioned in paragraph 6 above; (b) clarify the extent to which the Ordinance provides for legal aid for asylum seekers and refugees; (c) expand on the protections in place for such persons and on the mechanisms to inform them of these rights and protections; and (d) provide further information on the review and monitoring mechanisms established,[24] including the Torture Claims Appeal Board.[25] Please also provide updated information on support and services available for victims of torture.[26]

8. With reference to paragraph 3.7 of the periodic report, please provide data for the period under review, disaggregated by year, sex, country of origin and age, on the number of:

(a) Asylum requests registered;

(b) Requests for asylum, refugee status or other forms of humanitarian protection that were granted, including, if applicable, the number of cases in which protection was granted in application of the principle of non-refoulement;

(c) Persons extradited or expelled and the countries to which they were sent;

(d) Appeals against expulsion decisions on the basis that applicants might be in danger of being mistreated in their countries of origin, and the results of those appeals;

(e) Victims of torture who received services and the type of services offered, including rehabilitation, and the duration of the provision of each type of service.[27] Please also include information on the procedure used to identify victims of torture among asylum seekers.

9. In the light of the Committee's previous concluding observations (para. 7), please inform the Committee about steps taken or envisaged for the incorporation of article 3 of the Convention into the Crimes (Torture) Ordinance.[28] Do the authorities of the Special Administrative Region have plans to revise its position and extend to Hong Kong, China the application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol[29] and to establish effective post-return monitoring mechanisms?[30]

10. Please provide information on the number of asylum seekers and/or irregular migrants in detention and indicate the nature of this detention. Please describe the

[21] See CAT/C/CHN-HKG/5, para. 3.6, and CCPR/C/CHN-HKG/CO/3, para. 9.
[22] See CAT/C/CHN-HKG/5, para. 3.8.
[23] Ibid.
[24] See CCPR/C/CHN-HKG/CO/3, para. 9.
[25] See CAT/C/HKG/CO/4, para. 7 (c).
[26] See follow-up letter of 29 October 2010 sent to the State party, requesting clarification, p. 2.
[27] Ibid.
[28] See CAT/C/HKG/CO/4, para. 7 (a).
[29] See CCPR/C/CHN-HKG/CO/3, para. 9.
[30] See CAT/C/HKG/CO/4, para. 7 (a), (e) and (f).

conditions in the places where asylum seekers and/or irregular migrants are detained. Do they have access to prompt and free health services and to a lawyer? Are families who have children over one year of age held in separate facilities?[31] Please also provide information on the concrete measures taken to cease the administrative practice of detaining asylum-seeking and refugee children and to ensure that these children are provided with accessible and adequate support, as recommended by the Committee on the Rights of the Child (see CRC/C/CHN/CO/3-4, para. 84).[32] Are there any specific guidelines for the treatment of asylum-seeking or refugee children?

## Articles 5, 6, 7, 8 and 9

11. In the light of the Committee's previous concluding observations (para. 8), please update the Committee on any progress with respect to arrangements between the mainland of China and Hong Kong, China for the transfer of fugitive offenders and sentenced persons.[33] Please also clarify whether "death penalty safeguards" are used. If so, please provide the Committee with detailed information on the number of cases where "surrenders" or removals subject to safeguards or guarantees have occurred in the reporting period; on the Special Administrative Region's minimum requirements for these safeguards; and on the subsequent monitoring measures taken by Hong Kong, China in such cases as well as legal enforceability of the safeguards.[34]

12. Please provide information on cases since the previous periodic report was considered, if any, where the authorities of Hong Kong, China have rejected a request for the extradition of a person alleged to have committed an offence under the Convention, and have, subsequently, carried out their own prosecution. Please also provide information on cases in which mutual assistance was requested by or from Hong Kong, China. Please include the results of such requests.

## Article 10

13. Please provide updated information about the training programmes for prison staff, law enforcement officers, the judiciary, officials dealing with the expulsion, return or extradition of foreigners, and any other professionals involved in the custody, questioning or handling of persons deprived of their liberty under the control of the authorities of Hong Kong, China, on human rights, the treatment of detainees, and measures to prevent torture and ill-treatment. Please specify the frequency, type and effectiveness of the training, and indicate the steps taken to assess its effectiveness. Does the training include international standards related to the treatment of children in custody or care, gender- and culture-sensitive treatment and non-coercive investigation techniques? What efforts are made to train the police on the principle of proportionality when using force, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 11)? Please also include information on the use of the Convention as a basis for such training.[35]

14. With reference to paragraph 10.10 of the periodic report, please expand on the specific training programme on the Manual on the Effective Investigation and

[31] See CAT/C/HKG/Q/4/Add.1, question 11, paras. 51–56.

[32] See CRC/C/CHN/CO/3-4, para. 84 (a) and (b).

[33] See CAT/C/HKG/CO/4, para. 8; CAT/C/HKG/4, paras. 79 and 80; and CAT/C/HKG/Q/4/Add.1, paras. 87–89.

[34] See CAT/C/HKG/CO/4, para. 8; see also CAT/C/CHN-HKG/5, paras. 8.1 and 8.2.

[35] See CAT/C/CHN-HKG/5, paras. 10.1–10.5.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for officers of the Immigration Department and health-care professionals.[36] Is training on the Istanbul Protocol also provided to other professionals involved in the custody, questioning or handling of persons deprived of their liberty, and have the medical doctors in the prison system received training on how to identify and examine victims of torture? Please provide details on (a) how many health-care professionals have been trained; (b) how many days of training have been held; (c) who has trained them; and (d) how many victims of torture and ill-treatment have been identified by health-care professionals, in particular prison doctors, and by other relevant professionals, during the reporting period. Please also indicate whether health-care professionals receive training in providing gender-sensitive treatment.

## Article 11

15. Please provide updated statistics, disaggregated by sex, age and nationality, on the number of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention.

16. Please provide information on the conditions in police detention centres, and on the measures taken to prevent all forms of violence, torture and ill-treatment in such places. Please include information on measures taken to reduce overcrowding in police detention centres.

17. Please provide information on the extent to which Hong Kong, China uses solitary confinement in detention and medical settings, including on the number of persons placed in solitary confinement and the duration of such confinement, during the reporting period. Please also indicate the regime that is applicable with regard to prescribing and using restraints and solitary confinement. In particular, please include information on the relevant safeguards, such as medical examinations before, during and after these measures, and due process rights that apply in cases where restraint or solitary confinement are used.

18. In the light of the Committee's previous recommendations (para. 10) and with reference to paragraphs 11.5, 11.10 and 11.11 of the periodic report,[37] please provide detailed and updated information on:

(a) The number of cases in which strip or body cavity searches were conducted on detainees, disaggregated by year, sex, age, place of detention and detaining agency, and reason for detention. Please also provide updated and detailed information on the justification used by the police or prison official who ordered the search to be carried out, and on the number of complaints that have been submitted by detainees as a result of such searches. Have any investigations into alleged abuses been carried out, and if the allegations have been substantiated, have the perpetrators been punished?

(b) The complaints mechanisms made available to detainees who have been subjected to strip or body cavity searches who may be aggrieved, how detainees are made aware of their right to complain, and measures taken to ensure that those who complain do not fear retribution by police, immigration or detention officials;[38]

(c) The measures taken to limit, to the greatest extent possible, the use of strip or body cavity searches and to reduce the need to carry out manual body cavity searches.

[36] Ibid., para. 10.10.
[37] Ibid., para. 11.10.
[38] See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.

for example by using low-radiation X-ray body scanners.[39] In this context, please clarify the process involved in reviewing the order for a strip or body cavity search, including the role of the duty supervisor,[40] and include information on any independent mechanisms established to monitor these searches;[41]

(d) The general function of the medical officers and nurses involved in body cavity searches. Are they a part of the prison/detention health-care service and thus also responsible for providing treatment to the inmates that they have searched?

(e) The new directive on searches on persons with special needs. Please explain why the directive is limited to children below the age of 16, and the meaning of the term "appropriate adult".

19. In relation to the Committee's previous concluding observations (para. 11), please give a detailed account of the measures taken, such as training and awareness-raising activities, to address existing attitudes suggesting that abuses of persons during police operations in the context of prostitution-related offences may be condoned. What concrete measures have been taken to ensure the protection of such persons? Has there been any investigation into allegations of such abuse, and if the allegations have been substantiated, have those responsible been held accountable?[42]

20. Please provide information on the policies of the Correctional Services Department, the Immigration Department and the police in relation to body searches and detention of transgender persons.

21. Please inform the Committee whether guidelines have been established for law enforcement officials on the subject of demonstrations, including on the use of force[43] and on crowd control.

## Articles 12 and 13

22. Please comment on reports of police attacks and excessive use of force by the police against peaceful protestors, involving the use of pepper spray, water cannons, batons and tear gas, as was the case during the protests that took place between September and December 2014 in what became known as the "umbrella movement". In this context, please indicate whether an investigation was opened with regard to the alleged beatings of Ken Tsang by several police officers in the Admiralty protest zone on 15 October 2014. Please also inform the Committee about the number of persons who were arrested during the "umbrella movement", the length of their detention, whether they had access to lawyers and the number of complaints of torture or ill-treatment. Have any investigations been carried out into the above-mentioned events and have any disciplinary and/or criminal proceedings been opened? If so, and if the allegations have been substantiated, have the perpetrators been punished?

23. In the light of the Committee's previous recommendations (para. 12),[44] please provide further information on:

[39] See CAT/C/CHN-HKG/5, para. 11.5, and CAT/C/HKG/CO/4, para. 10 (c).
[40] See follow-up letter of 29 October 2010 sent to the State party, requesting clarification, p. 2.
[41] See CAT/C/HKG/CO/4, para. 10 (a) and (b).
[42] Ibid., para. 11, and CAT/C/CHN-HKG/5, paras. 13.3 and 13.4.
[43] See CCPR/C/CHN-HKG/CO/3, paras. 10 and 11.
[44] See also CCPR/C/CHN-HKG/CO/3, para. 12, and CAT/C/CHN-HKG/5, paras. 13.5–13.9.

(a) Steps taken or envisaged, if any, to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct;

(b) The number of complaints regarding torture or ill-treatment received by the Complaints Against Police Office during the reporting period, the number of such complaints that resulted in investigations, the number of investigations that led to prosecutions and, if the complaints were substantiated, that led to convictions of perpetrators. Please also provide information on the punishments given to those convicted, and on the reparations, including compensation, provided;

(c) The criteria that are used to determine whether a claim is substantiated or not and the reasons why cases have been determined to be "not pursuable" or have been withdrawn;

(d) The checks and balances in place to ensure that the complaints lodged with the Complaints Against Police Office are handled thoroughly, fairly and impartially.[45] In particular, please clarify the measures in place to ensure that complainants are not coerced by police or other officials into withdrawing or dropping their complaints. How is the independence of the Complaints Against Police Office ensured so that there is no hierarchy or institutional link between the investigator and the person being investigated?

(e) The number of complaints not endorsed by the Independent Police Complaints Council and the reasons for this;

(f) The statistics on the rates of participation in the Independent Police Complaints Council's Interviewing Witnesses Scheme and any efforts made to increase such participation;

(g) How members of the Independent Police Complaints Council are appointed and what the criteria for selection are. With reference to paragraph 13.6 of the periodic report, please also clarify the information provided that members of the Independent Police Complaints Council are drawn from a wide spectrum of the community;

(h) The measures in place to ensure that members of the Independent Police Complaints Council have the time, independence and resources necessary to carry out the mandate of this body effectively. In this context, please also elaborate on any mandatory attendance requirements that may be in place for members of the Independent Police Complaints Council;

(i) The number of scheduled and surprise observations of the Complaints Against Police Office's investigations and prison visits that were carried out by the Independent Police Complaints Council during the reporting period.[46]

24. Please update the Committee on the number of complaints relating to torture or ill-treatment filed with (a) the Correctional Services Department's Complaints Investigation Unit/Complaints Committee;[47] (b) the Immigration Department;[48] (c) the Customs and Excise Department;[49] and (d) the Complaints Committee of the Independent Commission Against Corruption;[50] as well as on the results of investigations and on the number of disciplinary, civil and criminal proceedings initiated and concluded. Please indicate

[45] See CAT/C/CHN-HKG/5, para. 13.7.
[46] See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.
[47] See CAT/C/CHN-HKG/5, para. 13.1.
[48] Ibid., para. 13.10.
[49] Ibid., para. 13.11.
[50] Ibid., paras. 13.12–13.14.

whether Hong Kong, China is considering establishing independent complaint mechanisms in the above-mentioned law enforcement departments.

## Article 14

25. With reference to paragraph 14.1 of the periodic report, please provide more details on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture or their families, since the last periodic report. Please include the number of requests for compensation that were made, the number that were granted, the amounts awarded and those actually paid in each case. Please also include updated and detailed information on the rehabilitation programmes, including the medical and psychological assistance provided to victims of torture and other ill-treatment.[51]

## Article 16

26. Please indicate the practical steps taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the home and in alternative care and day-care settings, and to repeal the "reasonable chastisement" defence.[52] Please also provide information on efforts to promote positive, non-violent and participatory forms of child-rearing and discipline and to raise awareness about the harmful effects of corporal punishment, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 16).[53]

27. With reference to the recommendations of the Human Rights Committee (CCPR/C/CHN-HKG/CO/3, para. 21), of the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 65) and of the Committee on Economic, Social and Cultural Rights (E/C.12/CHN/CO/2, para. 43), please indicate the measures taken to strengthen mechanisms to protect foreign domestic workers, in particular women, from working conditions amounting to forced labour or ill-treatment. What is being done to ensure that abusive employers are held accountable? Please also update the Committee about whether Hong Kong, China is considering repealing the "two-week rule", whereby migrant domestic workers have to leave the territory within two weeks of the termination of their contracts, and about the requirement for migrant domestic workers to live in the employing household. Please provide statistical data concerning the prevalence of violence against migrant workers in Hong Kong, China.

28. Please inform the Committee about steps taken or envisaged to repeal the mandatory surgery requirements for transsexual persons to gain official gender recognition.

29. Please provide information on cases of surgical and other procedures on intersex children and on the physical and psychological impact on these children. Does Hong Kong, China compile statistics on children born with intersex variations?

## Other issues

30. Please provide updated information on the process for extending the application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children,

[51] See CAT/C/HKG/Q/4/Add.1, para. 159.
[52] See CAT/C/CHN-HKG/5, para. 16.5.
[53] See CCPR/C/CHN-HKG/CO/3, para. 16.

child prostitution and child pornography to Hong Kong, China[54] and, if relevant, on the reasons for the delay in doing so.

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[54] See CAT/C/HKG/Q/4/Add.1, para. 39, and CRC/C/CHN/CO/3-4, para. 90.